

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Eighteenth Report to the Supreme Court of Maryland, recommending adoption of proposed amendments to Rules 9-102, 9-103, 9-105, 9-106, 9-107, 9-112, and 11-319.

The Committee's Two Hundred and Eighteenth Report containing the proposed Rules changes is set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before September 18, 2023 any written comments they may wish to make to rules@mdcourts.gov or:

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That is dealt with principally in the proposed amendments to Rule 9-112. New section (a) to that Rule defines "party" as including (1) a petitioner, (2) a prospective adoptee, (3) in a Private Agency Guardianship or Private Agency Adoption, the agency, and (4) in a Public Agency Adoption (i) after a termination of parental rights (TPR) or (ii) without a prior TPR, the local Department of Social Services to which the prospective adoptee was committed. A Committee Note to that section makes clear that the prospective adoptee's parent is **not** a party except as provided by Code, Family Law Article, § 5-301 in a Public Agency Adoption without a prior TPR.¹

Section (b) makes clear that docket entries and indices in adoption and guardianship cases are open to the parties to the proceeding but, except for a non-electronic index to a docket that is kept apart from the docket itself, not to anyone else except upon order of the court. Subsection (c)(1) shields all pleadings and papers in adoption and guardianship proceedings from public inspection upon filing unless otherwise ordered by the court but makes them open to inspection by the parties to the proceeding. That is time-limited, however. Subsection (c)(2) shields **the case file** in guardianship and adoption proceedings from everyone, including the parties, upon the later of entry of a judgment or, if there is an appeal, exhaustion of appellate review. Note an exception in subsection (c)(3) for final decrees entered prior to June 1, 1947.

The amendments to Rules 9-102, 9-103, 9-105, 9-106, 9-107, and 11-319 are conforming ones explained in the Reporter's notes to those Rules. An amendment to Rule 9-103 (e) permits an agency that declines to provide to a petitioner a document that must be submitted with a petition under subsection (b)(1) of the Rule to provide it instead to the court under seal. Such a submission must be accompanied by a written agreement by the parties to seal the submission or a motion to seal it.

For the further guidance of the Court and the public, following the proposed amendments to each Rule is a Reporter's note describing in further detail the reasons for the proposals. We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or

¹ Code, Family Law Article (FL), § 5-301(h) defines "party" as including a child's parent in a guardianship case except as provided in Code, FL § 5-326(a)(3)(iii) and in an adoption case under Part III of the subtitle (adoption without prior termination of parental rights).

interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully Submitted,

/ s /

Alan M. Wilner
Chair

AMW:sdm

cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-112 by adding new section (a) clarifying who is considered a party for the purpose of access to records; by adding a Committee note following new section (a); by re-lettering current sections (a) and (b) as (b) and (c), respectively; by adding "and Indices" to the tagline of section (b); by altering a provision in new section (b) pertaining to access to docket entries and indices; by adding "shielding and" to the tagline of new section (c); by creating new subsection (c) (1) containing updated provisions pertaining to shielding of records and access by a person filing a notice of objection; by adding a cross reference following subsection (c) (1); by creating new subsection (c) (2) (A) pertaining to sealing of records in guardianship proceedings; by creating new subsection (c) (2) (B) pertaining to sealing of records in adoption proceedings; by relocating a provision pertaining to adoption records prior to June 1, 1947 to new subsection (c) (3); by adding new subsection (c) (4) pertaining to inspection of sealed records; by adding a cross reference following subsection (c) (4); and by making stylistic changes, as follows:

Rule 9-112. COURT RECORDS

(a) Party

For purposes of this Rule, "party" includes (1) a petitioner, (2) the prospective adoptee, (3) in a Private Agency Guardianship or Private Agency Adoption, the agency, and (4) in a Public Agency Adoption after TPR or Public Agency Adoption without Prior TPR, the local department to which the prospective adoptee is committed.

Committee note: Unless the prospective adoptee's parent is also a petitioner, the parent is not a party to a proceeding under this Chapter except as provided by Code, Family Law Article, § 5-301 in a Public Agency Adoption without Prior TPR.

~~(a)~~ (b) Dockets and Indices

The clerk shall keep separate dockets for (1) adoption and guardianship proceedings and (2) revocations of consent to adoption or guardianship for which there are no pending adoption or guardianship proceedings in that county. These dockets are not open to inspection by any person, ~~including the parents,~~ except upon order of court, but docket entries in a proceeding shall be open to inspection by the parties to the proceeding. If the court maintains a non-electronic index to a docket that is kept apart from the docket itself, the index ~~is~~ shall be open to public inspection.

~~(b)~~ (c) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in adoption and guardianship proceedings shall be ~~sealed~~ shielded from public inspection when they are filed. Unless otherwise ordered by the court, and subject to Rule 9-103 (e) and subsection (c) (2) of this Rule, pleadings and other papers shall be open to inspection by parties to a proceeding. If a person files a notice of objection pursuant to Rule 9-107, the person's access to pleadings and papers filed in the proceeding is governed by the court's order entered pursuant to Rule 9-107 (f).

Cross reference: See Rule 16-914 (a), requiring denial of public inspection of case records in actions for adoption, guardianship, or revocation of consent to adoption or guardianship filed under this Chapter. See Rule 20-109 concerning remote access.

(2) Sealing of Records

(A) Guardianship Records

The case file for a guardianship proceeding shall be sealed and not open to inspection by any person, including the parties, upon the later of (i) 30 days after termination of the proceeding pursuant to Code, Family Law Article, § 5-3A-25 or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

(B) Adoption Records

Except as otherwise provided in subsections (c) (3) and (c) (4) of this Rule, the case file for an adoption proceeding shall be sealed and are not open to inspection by any person,

~~including the parents, except upon an order of court the parties, upon the later of (i) 30 days after entry of a judgment of adoption or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party. The~~ When an adoption becomes final, the clerk shall notify send notice of that event to each person entitled to notice that the adoption has been finalized.

Cross reference: See Code, Health - General Article, § 4-211, concerning the amendment and replacement of birth certificates following adoption and the requirement that the clerk transmit to the Maryland Department of Health a report of adoption or revocation of adoption.

(3) Adoption Records Prior to June 1, 1947

If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party.

(4) Inspection of Sealed Records

Sealed records of guardianship and adoption proceedings shall remain sealed and not be open to inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title 5, Subtitle 3, Part V; Subtitle 3A, Part IV; and Subtitle 3B, Part III concerning access to records relating to an adoptee.

Source: This Rule is derived from former Rule D80 a and c and is in part new.

REPORTER'S NOTE

By Rules Order dated May 8, 2023, the Supreme Court of Maryland remanded to the Rules Committee proposed amendments to Rule 9-112 submitted to the Court as part of the Two Hundred and Sixteenth Report. The proposed amendments to Rules 9-112 and 11-319 contained in that Report were transmitted on an emergency basis to address programming changes that had been made as a result of analysis by the Major Projects Committee ("the MPC") of the operation of the Rules with respect to remote access by parties and attorneys to Title 9 and Title 11 adoption and guardianship proceedings in the MDEC system.

The proposed amendments to both Rules attempted to address the MPC's belief that the Rules, as written, prohibit remote MDEC access to adoption and guardianship cases by any person, including access by a party or attorney in a pending case. Effective February 23, 2023, the Office of Information Technology in the Administrative Office of the Courts established new document security types for adoption and guardianship matters. These documents are now sealed except to judges and certain courthouse personnel. The Rules Committee was informed that the programming changes had an immediate impact on the ability of attorneys in adoption and guardianship cases to carry out their duties to their clients.

Shortly before its open meeting on the Two Hundred and Sixteenth Report, the Rules Committee received and transmitted to the Court a comment from a clerk in the Office of the Clerk of the Circuit Court for Anne Arundel County raising concerns with the proposed amendments to Rule 9-112. The primary concern expressed by the clerk was that, as amended, the Rule could permit petitioners and biological parents to access sensitive information about each other that they could not access previously and do not need, such as personal identifying information, health statements, and financial documents.

At its open meeting on the 216th Report, the Court heard additional comment from the Anne Arundel County clerk who had raised the concerns, and the Court discussed the issues raised. The Court voted to adopt the amendments to Rule 11-319, with an immediate effective date, and remand Rule 9-112 to the Rules Committee for further study.

Practitioners who were consulted after the remand advised the Committee that private agency guardianships and almost all adoption types are "ex parte," with only the petitioner(s) and the child as parties to the proceeding. The child placement agency is also generally treated as a party, but is not one by statute unless it files the petition.

Parents, however, are not parties to any Title 9 proceedings except a public agency guardianship without prior termination of parental rights (Code, Family Law, § 5-301). A parent or other individual who is not a party but whose consent is required may file a notice of objection. If the notice of objection is timely filed, and the filer has standing, the court is responsible for giving the objector access to the case file with reasonable conditions pursuant to Rule 9-107 (f).

Practitioners informed the Committee that after the programming change went into effect, they have not had access to their own filings and, in some cases, do not receive documents from the court, including court orders. One practitioner reported not being able to verify what documents the child placement agency had submitted and what documents were missing, resulting in an adoption being delayed. Another reported not receiving a notice of objection, leading her to mistakenly inform her clients that the case could proceed as an uncontested matter. Attorneys uniformly reported that even prior to the programming change, practices differed between different Clerk's offices and child placement agencies.

Proposed amendments to Rule 9-112 and related amendments to Rules 9-103 and 9-107 clarify and standardize practices pertaining to filing of and access to records in Title 9, Chapter 100 proceedings.

In Rule 9-112, proposed new section (a) clarifies who is considered a party for the purpose of access to case records. "Party" is a defined term only in public agency guardianships and adoptions (Code, Family Law, § 5-301). The public agency is a party only to the guardianship, which is governed by the Rules Title 11, Chapter 300, or an adoption after termination of parental rights under certain circumstances. The child's parent is a party by statute only to a public agency adoption without prior termination of parental rights. New section (a) states that a "party" includes a petitioner, the prospective adoptee, and the agency, if applicable. A Committee note clarifies the circumstances where a parent who is not a petitioner is a party.

Current sections (a) and (b) are re-lettered as (b) and (c), respectively.

Proposed amendments to re-lettered section (b) ensure that parties can view docket entries in a proceeding and become aware of the existence of each document in the court's file even if the document is under seal as contemplated by proposed amendments to Rule 9-103 (e).

Proposed amendments to re-lettered section (c) generally require that pleadings and papers in adoption and guardianship proceedings be shielded when filed and then sealed when the case is concluded. Subsection (c)(1) provides that, with some exceptions, pleadings and papers are open to inspection by parties to a proceeding. Access to records by a person who files a notice of objection is governed by the court's order entered pursuant to Rule 9-107 (f). A cross reference following subsection (c)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

New subsection (c)(2) dictates when the case file must be sealed in each type of proceeding. Subsection (c)(2)(A) requires guardianship records to be sealed 30 days after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. Subsection (c)(2)(B) contains similar provisions pertaining to sealing adoption records.

The existing language governing adoption records for final decrees entered before June 1, 1947 is relocated to new subsection (c)(3).

New subsection (c)(4) requires sealed records to remain sealed unless opened for inspection by order of court. A cross reference following subsection (c)(4) cites to statutes governing access to records.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-102 by making stylistic changes in subsection (c) (2) (C), as follows:

Rule 9-102. CONSENTS; REVOCATION OF CONSENT

. . .

(c) Revocation of Consent

. . .

(2) Procedure for Revocation of Consent

. . .

(C) Notice

The court shall send to all parties, ~~including~~ and the person who revoked the consent, a copy of the revocation and notice of a hearing scheduled pursuant to subsection (c) (2) (D) of this Rule.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 9-102 clarify in subsection (c) (2) (C) that a parent who revokes consent may not be a party to the proceeding but is entitled to notice pursuant to the subsection.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-103 by replacing references to "a party" with "an individual" in subsection (b)(1)(K); by altering a provision in section (d) pertaining to filing a document after the petition is filed; by adding to the tagline of section (e); by creating new subsection (e)(1) containing the current provisions of section (e), with amendments, and a new provision for submitting a document under seal; by adding new subsection (e)(2) governing sealing by agreement or motion; by adding a Committee note following subsection (e)(2); by adding new subsection (e)(3) requiring the clerk to make a docket entry regarding the filing; and by making stylistic changes, as follows:

Rule 9-103. PETITION

(a) Titling of Case

A proceeding shall be titled "In re Adoption/Guardianship of _____ "(first name and first initial of last name of prospective adoptee or ward)."

(b) Petition for Adoption

(1) Contents

A petition for adoption shall be signed and verified by each petitioner and shall contain the following information:

(A) The name, address, age, business or employment, and employer of each petitioner;

(B) The name, sex, and date and place of birth of the person to be adopted;

(C) The name, address, and age of each parent of the person to be adopted;

(D) Any relationship of the person to be adopted to each petitioner;

(E) The name, address, and age of each child of each petitioner;

(F) A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract;

Committee note: If the text of an advertisement was used verbatim more than once, the requirement that a copy of all advertisements be attached to the petition may be satisfied by attaching a single copy of the advertisement, together with a list of the publications in which the advertisement appeared and the dates on which it appeared.

(G) If the person to be adopted is a minor, the names and addresses of all persons who have had legal or physical care, custody, or control of the minor since the minor's birth and the period of time during which each of those persons has had care,

custody, or control, but it is not necessary to identify the names and addresses of foster parents, other than a petitioner, who have taken care of the minor only while the minor has been committed to the custody of a child placement agency;

(H) If the person to be adopted is a minor who has been transported from another state to this State for purposes of placement for adoption, a statement of whether there has been compliance with the Interstate Compact on the Placement of Children (ICPC);

(I) If applicable, the reason why the spouse of the petitioner is not joining in the petition;

(J) If there is a guardian with the right to consent to adoption for the person to be adopted, the name and address of the guardian and a reference to the proceeding in which the guardian was appointed;

(K) Facts known to each petitioner that may indicate that ~~a party~~ an individual has a disability that makes ~~a party~~ an individual incapable of consenting or participating effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect;

(L) Facts known to each petitioner that may entitle the person to be adopted or a parent of that person to the appointment of an attorney by the court;

(M) If a petitioner desires to change the name of the person to be adopted, the name that is desired;

(N) As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction;

(O) That the petitioner is not aware that any required consent has been revoked; and

(P) If placement pending final action on the petition is sought in accordance with Code, Family Law Article, § 5-3B-12, a request that the court approve the proposed placement.

(2) Exhibits

(A) Except for an adoption pursuant to Code, Family Law Article, § 5-3B-27, the following documents shall accompany the petition as exhibits:

(i) A certified copy of the birth certificate or "proof of live birth" of the person to be adopted;

(ii) A certified copy of the marriage certificate of each married petitioner;

(iii) A certified copy of all judgments of divorce of each petitioner;

(iv) A certified copy of any death certificate of a person whose consent would be required if that person were living;

(v) A certified copy of all orders concerning temporary custody or guardianship of the person to be adopted;

(vi) A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances;

(vii) A document evidencing the annual income of each petitioner;

(viii) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation;

Cross reference: See Code, Family Law Article, §§ 5-331, 5-338, and 5-339 as to a Public Agency Adoption without Prior TPR; 5-345, 5-350, and 5-351 as to a Public Agency Adoption after TPR; 5-3A-13, 5-3A-18, and 5-3A-19 as to a Private Agency Guardianship; 5-3A-35 as to a Private Agency Adoption; and 5-3B-20 and 5-3B-21 as to an Independent Adoption.

(ix) If applicable, proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws; and any appropriate translation of documents required to allow the child to enter the United States;

Cross reference: See Code, Family Law Article, §§ 5-305, 5-331, and 5-338 as to a Public Agency Adoption without Prior TPR;

5-305 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-05, 5-3A-13, and 5-3A-18 as to a Private Agency Guardianship; 5-3A-05 as to a Private Agency Adoption; and 5-3B-04 and 5-3B-20 as to an Independent Adoption.

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent describing the attempts to identify and locate the unknown or missing parent;

Cross reference: See Code, Family Law Article, §§ 5-331 and 5-334 as to a Public Agency Adoption without Prior TPR and 5-3B-15 as to an Independent Adoption.

(xi) A copy of any agreement between a parent of the person to be adopted and a petitioner relating to the proposed adoption with any required redaction;

Cross reference: See Code, Family Law Article, §§ 5-308 and 5-331 as to a Public Agency Adoption without Prior TPR; 5-308 and 5-345 as to a Public Agency Adoption after TPR; 5-3A-08 as to a Private Agency Adoption; and 5-3B-07 as to an Independent Adoption.

(xii) If the adoption is subject to the Interstate Compact on the Placement of Children, the appropriate ICPC approval forms;

Cross reference: Code, Family Law Article, § 5-601.

(xiii) A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable; and

(xiv) If required, a notice of filing as prescribed by Code, Family Law Article:

(1) § 5-331 in a Public Agency Adoption without Prior TPR; or

(2) § 5-345 in a Public Agency Adoption after TPR.

(B) If the petition is filed pursuant to Code, Family Law Article, § 5-3B-27 by the spouse of the prospective adoptee's mother or an individual who consented to the prospective adoptee's conception by means of assisted reproduction, the following documents shall accompany the petition as exhibits:

(i) A certified copy of the petitioner's and prospective adoptee's mother's marriage certificate or evidence of the parties' shared express intent to become parents of the child by means of assisted reproduction, including a copy of any written agreement consenting to the conception of the prospective adoptee by means of assisted reproduction;

(ii) A certified copy of the prospective adoptee's birth certificate;

(iii) A statement explaining the circumstances of the prospective adoptee's conception in detail sufficient to identify any individual who may be entitled to notice or whose consent may be required under this subtitle;

(iv) The original of all consents to the adoption, any required affidavits of translators or attorneys, and, if available, a copy of any written statement by the consenting

person indicating a desire to revoke the consent, whether or not that statement constitutes a valid revocation; and

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: Code, Family Law Article, § 5-3B-27.

(C) The following documents shall be filed before a judgment of adoption is entered:

(i) Any post-placement report relating to the adoption, if applicable;

Cross reference: See Code, Family Law Article, §§ 5-337 as to a Public Agency Adoption without Prior TPR; 5-349 as to a Public Agency Adoption after TPR; 5-3A-31 and 5-3A-34 as to a Private Agency Adoption; and 5-3B-16 as to an Independent Adoption.

(ii) A brief statement of the health of the child by a physician or other health care provider;

(iii) If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption;

Cross reference: Code, Family Law Article, § 5-3B-24 as to an Independent Adoption.

(iv) An affidavit of counsel for a parent, if required by Code, Family Law Article:

(1) §§ 5-307 and 5-339 in a Public Agency Adoption without Prior TPR;

(2) §§ 5-3A-07 and 5-3A-19 in a Private Agency Guardianship; or

(3) §§ 5-3B-06 and 5-3B-21 in an Independent Adoption;

(v) An affidavit of counsel for a child, if the child is represented;

Cross reference: See Code, Family Law Article, §§ 5-307 and 5-338 as to a Public Agency Adoption without Prior TPR; 5-307 and 5-350 as to a Public Agency Adoption after TPR; 5-3A-07 and 5-3A-35 as to a Private Agency Adoption; and 5-3B-06 and 5-3B-20 as to an Independent Adoption.

(vi) If the adoption is subject to the Interstate Compact on the Placement of Children, the required post-placement form;

(vii) A proposed judgment of adoption; and

(viii) A Maryland Department of Health Certificate of Adoption Form.

Cross reference: Code, Health-General Article, § 4-211 (f).

(c) Petition for Guardianship

A petition for guardianship shall state all facts required by subsection (b) (1) of this Rule, to the extent that the requirements are applicable and known to the ~~petition~~ petitioner. It shall be accompanied by all documents required to be filed as exhibits by subsection (b) (2) of this Rule, to the extent the documents are applicable. The petition shall also state the license number of the child placement agency.

Cross reference: See, Code, Family Law Article, § 5-3A-13 as to a Private Agency Guardianship.

(d) If Facts Unknown or Documents Unavailable

If a fact required by subsection (b)(1) or section (c) of this Rule is unknown to a petitioner or if a document required by subsection (b)(2) or section (c) is unavailable, the petitioner shall so state and give the reason in the petition or in a subsequent affidavit. If a document required to be submitted with the petition becomes available after the petition is filed, the petitioner shall ~~file it~~ ensure that the document is filed as soon as it becomes available.

(e) Disclosure of Facts Known or Documents Available to Child Placement Agency

(1) Filing by Agency

If any fact required by subsection (b)(1) of this Rule to be stated is known to a child placement agency, and the agency declines to disclose it to a petitioner, the agency shall disclose the fact to the court in writing under seal at the time the petition is filed. If any document required to be submitted with the petition under subsection (b)(2) of this Rule is available to the child placement agency, and the agency declines to provide the document to the petitioner, the agency shall provide the document to the court under seal.

(2) Agreement or Motion

A submission under this section shall be accompanied either by (A) a written agreement by the agency and the parties to seal the submission or (B) a motion to seal.

Committee note: Parties may agree at the outset of a proceeding that certain information and documents will be filed under seal. See Rule 20-201 (d).

(3) Docketing

The clerk shall make a docket entry of a filing under this section.

Source: This Rule is derived in part from former Rule D72, in part from former Rule D80, and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 9-103 update and expand provisions related to information and documents required to be submitted with a petition for guardianship or adoption that may be submitted separate from the petition itself or by someone other than the petitioner. See the Reporter's note to Rule 9-112 for more information.

Proposed amendments to subsection (b) (1) (K) replace references to "a party" with "an individual." Certain statutes provide for the appointment of an attorney for a parent, who is not always a party to the proceeding, if the parent has a disability that makes the parent incapable of consenting.

Proposed amendments to section (d) clarify that the petitioner is responsible for ensuring that a document that becomes available after the petition is filed is submitted to the court. The Committee was informed that in proceedings involving a child placement agency, the agency may not be the petitioner but could be the source of documents submitted to the court. The amendment allows for situations where the petitioner

is not submitting the document but is coordinating with the agency or any other source of a document that is necessary.

Current section (e) permits a child placement agency to disclose certain information directly to the court if the agency does not want to disclose a fact required by subsection (b)(1) to the petitioner. This provision is amended to require the disclosure to be made under seal. A new provision allows the same practice to occur for documents required by subsection (b)(2). The Committee was informed that, despite their nonpublic nature, some Title 9, Chapter 100 proceedings involve documents that are not disclosed to all parties. Practices differ between counties depending on the case type and parties and agencies involved. Proposed new subsection (e)(2) permits these practices to continue by agreement where the parties decide that certain documents will be submitted under seal. If there is no agreement, the filer must move for filings to be sealed. A Committee note permits the agreement between the parties to be made at the start of the proceeding. New subsection (e)(3) requires the clerk to docket the filing so that the parties are aware of what sealed documents are in the court file.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-105 by replacing certain references to "party" with "individual" in the Rule title, the tagline of section (b), and throughout that section; by correcting a statutory reference in the tagline of subsection (a)(3); by clarifying in subsection (b)(1) that the parties may agree that a parent or prospective adoptee who is not represented has a disability that prevents the individual from consenting or participating effectively; by requiring in subsection (b)(2)(C) that the court provide notice of a hearing to all parties and the alleged disabled individual; and by making stylistic changes in subsection (c)(2), as follows:

Rule 9-105. SHOW CAUSE ORDER; DISABILITY OF ~~A PARTY~~ AN INDIVIDUAL; OTHER NOTICE

(a) Requirement for Show Cause Order

Promptly upon the filing of a petition for adoption or guardianship, the court shall issue a show cause order in substantially the form set forth in section (e) of this Rule when required by Code, Family Law Article:

(1) § 5-334 in a Public Agency Adoption without Prior TPR;

(2) § 5-3A-15 in a Private Agency Guardianship;

(3) ~~§ 5-3B-14~~ § 5-3B-15 in an Independent Adoption.

If the petition seeks adoption of a minor, the show cause order shall not divulge the name of the petitioner. If the petition seeks appointment of a guardian, the show cause order shall state the name of the child placement agency seeking guardianship.

(b) Appointment of Attorney for Disabled ~~Party~~ Individual

(1) If the parties agree that a ~~party~~ parent or prospective adoptee who is not represented has a disability that makes ~~the party~~ that individual incapable of consenting or participating effectively in the proceeding, the court shall appoint an attorney who shall represent the disabled ~~party~~ individual throughout the proceeding.

(2) If there is a dispute as to whether a ~~party~~ an individual who is not represented has a disability that makes the ~~party~~ individual incapable of consenting or participating effectively in the proceeding, the court shall:

(A) hold a hearing promptly to resolve the dispute;

(B) appoint an attorney to represent the alleged disabled ~~party~~ individual at that hearing;

(C) provide notice of that hearing to all parties and the alleged disabled individual; and

(D) if the court finds at the hearing that the ~~party~~ individual has such a disability, appoint an attorney who shall represent the disabled ~~party~~ individual throughout the proceeding.

Cross reference: See Code, Family Law Article, §§ 5-307 as to a Public Agency Adoption without Prior TPR; 5-3A-07 as to a Private Agency Guardianship; and 5-3B-06 as to an Independent Adoption. For eligibility of an individual for representation by the Office of the Public Defender, see Code, Family Law Article, § 5-307 and Code, Criminal Procedure Article, § 16-204.

(c) Service of Show Cause Order

(1) Method of Service

The show cause order shall be served on those persons and in the manner required by Code, Family Law Article:

(A) § 5-334 in a Public Agency Adoption without Prior TPR;

(B) § 5-3A-15 in a Private Agency Guardianship; or

(C) § 5-3B-15 in an Independent Adoption.

(2) Time for Service

Unless the court orders otherwise, a show cause order shall be ~~service~~ served within 90 days after the date it is issued. If service is not made within the period, a new show cause order shall be issued at the request of the ~~petition~~ petitioner.

(3) Notice of Objection

A show cause order shall be served with two copies of a pre-captioned notice of objection form in substantially the form

set forth in section (f) of this Rule. In a public agency adoption, a copy of the petition shall be attached.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 9-105 conform the Rule to existing statutes and clarify that a parent or prospective adoptee are the individuals who may be appointed an attorney if they have a disability that makes them incapable of consenting or participating effectively in a proceeding under the Rules in Title 9, Chapter 100. Current section (b) refers to "Appointment of Attorney for Disabled Party," but a parent is not a party to most guardianship and adoption proceedings conducted pursuant to this Chapter. The relevant statutes, referenced at the end of section (b), refer to appointment of counsel for a parent or a prospective adoptee when certain conditions are met.

Clarifying amendments to the title of the Rule, the tagline to section (b), and throughout section (b) replace references to "party" with "individual."

Proposed amendments to subsection (a)(3) correct a statutory reference.

Proposed amendments to subsection (c)(2) correct typographical errors identified in the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-106 by replacing "party" with "individual" in section (a), as follows:

Rule 9-106. APPOINTMENT OF ATTORNEY - ATTORNEY AFFIDAVIT - INVESTIGATION

(a) Appointment of Attorney

The court shall appoint an attorney for ~~a party~~ an individual when required by Code, Family Law Article:

- (1) § 5-307 in a Public Agency Adoption without Prior TPR;
- (2) § 5-307 in a Public Agency Adoption after TPR;
- (3) § 5-3A-07 in a Private Agency Guardianship;
- (4) § 5-3A-07 in a Private Agency Adoption; or
- (5) § 5-3B-06 in an Independent Adoption.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 9-106 clarify that an individual who may not always be a party, such as a parent in certain case types, may be appointed an attorney pursuant to the statutes listed.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY GUARDIANSHIP

AMEND Rule 9-107 by adding to section (a) a provision pertaining to a request for access to records, by adding to sections (c) and (d) a reference to a child placement agency, by adding to section (c) a requirement that the clerk serve a request for access to case records, by adding new subsection (d) (1) containing the current provisions of section (d), by adding new subsection (d) (2) pertaining to a response to a request for access to records, by adding a Committee note following subsection (d) (2), by adding to section (f) a provision that the court may not enter an order under that section until after the time for filing responses under subsections (d) (1) and (d) (2) has expired, by clarifying in section (f) that an order under that section may restrict or place conditions on access to certain papers filed in the proceeding, and by making stylistic changes, as follows:

Rule 9-107. OBJECTION

(a) In General

Any person having a right to participate in a proceeding for adoption or guardianship may file a notice of objection to

the adoption or guardianship. The notice may include a statement of the reasons for the objection and a request for the appointment of an attorney. The notice may be accompanied by a request for access to case records.

Cross reference: See Rule 9-105 for Form of Notice of Objection.

(b) Time for Filing Objection

(1) In General

Except as provided by subsections (b) (2) and (b) (3) of this Rule, any notice of objection to an adoption or guardianship shall be filed within 30 days after the show cause order is served.

(2) Service Outside of the State

If the show cause order is served outside the State but within the United States, the time for filing a notice of objection shall be within 60 days after service.

(3) Service Outside of the United States

If the show cause order is served outside the United States, the time for filing a notice of objection shall be within 90 days after service.

(4) Service by Publication in a Newspaper and on Website

If the court orders service by publication, the deadline for filing a notice of objection shall be not less than 30 days from the later of (A) the date that the notice is published in a

newspaper of general circulation or (B) the last day that the notice is published on the Maryland Department of Human Services website.

(c) Service

The clerk shall serve a copy of any notice of objection and any request for access to case records on all parties and, if applicable, the child placement agency in the manner provided by Rule 1-321.

(d) Response

(1) Standing and Timeliness

Within 10 days after being served with a notice of objection, any party or, if applicable, the child placement agency may file a response challenging the standing of the person to file the notice or the timeliness of the filing of notice.

(2) Access to Records

Within 10 days after being served with a request for access to case records, any party or, if applicable, the child placement agency may file a response identifying papers in the proceeding as to which the party requests that the court deny access or place conditions on access in an order entered pursuant to section (f) of this Rule.

Committee note: Examples of papers as to which the court may deny access or impose conditions, such as redaction, regarding access that is granted include financial records, personal

identifying information, and a home study conducted by a child placement agency.

(e) Hearing

If any party files a response, the court shall hold a hearing promptly on the issues raised in the response.

(f) Determination; Access to Records

After expiration of the time to file any response under subsections (d)(1) and (d)(2), as applicable, If the court determines that shall (1) determine whether the person filing the notice of objection has standing to do so and that whether the notice of objection is was timely filed, it shall and (2) if a request for access to records was filed, enter an order permitting the person to inspect the all or certain specified papers filed in the proceeding. subject to An order permitting inspection may include reasonable conditions imposed in the order on access to papers as to which inspection is permitted. The court may amend an order entered pursuant to this section at any time on its own initiative or on request of a party.

Source: This Rule is derived in part from former Rule D76 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 9-107 update and clarify the procedure for access to case records by an individual filing a notice of objection in a guardianship or adoption proceeding. See the Reporter's note to Rule 9-112 for more information.

Section (a) is amended to add that a notice of objection may be accompanied by a request for access to case records.

Proposed amendments to sections (c) and (d) add reference to a child placement agency, where applicable, to account for situations where the agency may not be a party to the proceeding but is a participant.

Section (c) is amended to provide that the clerk shall notify the parties and, if applicable, the child placement agency, of a request for access to court records in addition to any notice of objection.

Proposed new subsection (d) (2) adds a mechanism for the parties or agency to respond to a request for access to records by an objector. The Committee was informed that many attorneys for the parties submit a request to restrict an objector's access to the court, but it is not expressly provided for in the Rules. A Committee note after subsection (d) (1) provides examples of information and documents that may be subject to restrictions on access.

Proposed amendments to section (f) provide that the court may not enter an order under that section until the time for filing responses under subsections (d) (1) and (d) (2) has expired. Additional amendments clarify that the order may permit access only to certain papers and may place conditions on access.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 300 - GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 11-319 by adding "public" to the cross reference following subsection (b) (1), by replacing "all pleadings and other papers" with "the case file" in subsection (b) (2), and by making stylistic changes, as follows:

Rule 11-319. COURT RECORDS

(a) Dockets

The court shall keep a separate docket for guardianship proceedings, which shall be ~~confidential and~~ shielded from public inspection.

(b) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in guardianship proceedings shall be ~~confidential and~~ shielded from public inspection when they are filed.

Cross reference: See Rule 16-914 (a) requiring denial of public inspection of case records in actions for guardianship filed under this Chapter and Rule 20-109 concerning remote access.

(2) Sealing of Records

~~All pleadings and other papers~~ The case file shall be sealed and not open to inspection by any person, including a

parent, upon the later of (A) 30 days after the guardianship action is closed, or (B) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

Cross reference: See Code, Family Law Article, § 5-328 and Rule 11-318 concerning termination of guardianship proceedings and a court order closing the guardianship action.

(3) Inspection of Sealed Records

Sealed records of guardianship proceedings shall remain sealed and not be ~~opened for~~ open to inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title 5, Subtitle 3, Part V concerning access to records relating to an adoptee.

Source: This Rule is derived from Rule 9-112 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 11-319 make conforming amendments to those recommended by the Committee to parallel provisions in Rule 9-112. See the Reporter's note to that Rule for more information.